

**COMMERCIAL REHABILITATION AGREEMENT**

By and Between the

**REDEVELOPMENT AGENCY OF THE CITY OF BURBANK**

and

**PALLISER FURNITURE LTD.**

A handwritten signature or mark, possibly a stylized 'N' or a cursive signature, located in the lower right quadrant of the page.

## COMMERCIAL REHABILITATION AGREEMENT

**THIS COMMERCIAL REHABILITATION AGREEMENT** (this "Agreement") is entered into as of April 20, 2005, 2005, by and between the **REDEVELOPMENT AGENCY OF THE CITY OF BURBANK**, a public body, corporate and politic (the "Agency"), and **PALLISER FURNITURE LTD**, a Canadian federal limited liability corporation (the "Developer").

### RECITALS

The following recitals are a substantive part of this Agreement:

A. In furtherance of the objectives of the Community Redevelopment Law of the State of California, Health and Safety Code Section 33000, et seq., the Agency has adopted a Downtown Tenant Assistance Program ("DTAP") to assist owners and tenants of commercial properties to rehabilitate or improve buildings located in downtown Burbank, within the City Centre Redevelopment Project Area. The DTAP may be used by owners or tenants to rehabilitate and/or improve with tenant improvements buildings for use by quality retail tenants.

B. The Agency desires to effectuate the redevelopment, rehabilitation, and improvement of the commercial building ("Building") located at 308 N. San Fernando Boulevard in Burbank (the "Property"). The Property is further defined in Article 1 hereof and further described in the Property Legal Description which is attached hereto as Attachment No. 1.

C. Developer is the largest furniture manufacturer in Canada and the parent company of EQ3 Realty Inc. ("EQ3"). EQ3 is a wholly-owned subsidiary of Palliser Furniture Corporation which is a wholly owned subsidiary of Developer. EQ3 is a retailer of modern furniture and home accessories.

D. As of the date of this Agreement ("Date of Agreement"), the Developer is in negotiations to lease the Building from Palm Avenue Associates ("Owner"). Developer has requested the Agency's assistance under the DTAP to undertake base building improvements and tenant improvements to the Building.

E. Subject to the terms of this Agreement, Agency will provide a loan to the Developer in an amount not to exceed Two Hundred Fifty Seven Thousand Eight Hundred Dollars (\$257,800) (the "Agency Loan") and, in exchange, Developer will construct or cause the construction of the base building improvements and tenant improvements required hereunder. Prior to disbursement of any loan proceeds by the Agency, the Developer will be required to provide evidence of a written lease agreement with Owner for approximately 8,725 adjusted gross square feet of space in the Building.



F. The Agency Loan made pursuant to the terms of this Agreement is consistent with the DTAP, is in the vital and best interest of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements under which the redevelopment of the Redevelopment Project has been undertaken.

NOW, THEREFORE, the Agency and the Developer hereby agree as follows:

## Article I. PURPOSE OF AGREEMENT; DEFINITIONS

### Section 1.1 Purpose of Agreement.

The purpose of this Agreement is to assist Developer in the rehabilitation of the Building, cause the construction of the Improvements, and provide for the operation of an EQ3 furniture store in the Building. This Agreement provides for the rehabilitation and tenanting of a centrally-located building in downtown Burbank with a pedestrian friendly retail use. This Agreement is in the vital and best interests of the City and the health, safety, morals and welfare of its residents, and in accordance with public purposes and provisions of applicable federal, state and local laws and requirements.

### Section 1.2 Definitions

**"Agency"** means the Redevelopment Agency of the City of Burbank, a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Chapter 2 of the Community Redevelopment Law, and any assignee of or successor to its rights, powers and responsibilities.

**"Agency Loan"** means the loan to be made by the Agency to the Developer pursuant to Section 3.2 of this Agreement.

**"Agreement"** means this Commercial Rehabilitation Agreement between the Agency and the Developer.

**"Base Building Improvements"** mean the improvements to be made to the Building as set forth in the Scope of Work.

**"Building"** means the commercial building located on the Property.

**"City"** means the City of Burbank, a California municipal corporation. The City is not a party to this Agreement

**"Closing"** means the date the Agency certifies that the Conditions Precedent to the disbursement of the Agency Loan have been satisfied or waived in the reasonable discretion of the Agency in accordance with Section 3.2(C) hereof.



**"Community Redevelopment Law"** means California Health and Safety Code Section 33000, *et seq.*, as the same now exists or may hereinafter be amended.

**"Conditions Precedent"** means the conditions precedent to the Closing for the benefit of the Agency, as set forth in Section 3.2 (C) hereof.

**"Construction Drawings"** means the detailed construction drawings and plans to be prepared with respect to the Improvements, as set forth in Section 2.2 hereof.

**"County"** means the County of Los Angeles.

**"Date of Agreement"** means the date set forth in the first paragraph hereof.

**"Default"** means the failure of a party to perform any action or covenant required by this Agreement within the time periods provided herein following notice and opportunity to cure, as set forth in Section 5.1 hereof.

**"Developer"** means Palliser Furniture Ltd., a Canadian federal limited liability corporation, its subsidiaries, and its permitted successors and assigns, including EQ3 and for the purposes of this Agreement and the Attachments and Exhibits hereto, the Agency understands that the Lease will be executed by EQ3 and the Base Building Improvements will be conducted either directly by the Developer or by EQ3.

**"Eligible Costs"** means the costs eligible to be reimbursed by the Agency Loan pursuant to the terms of this Agreement, which shall include hard construction costs for the Base Building Improvements and Tenant Improvements and associated soft costs (architectural, engineering, permits, and fees).

**"Exterior Concept Drawings"** is defined in Section 2.2 hereof.

**"Exterior Improvements"** means the improvements to the exterior of the Building in accordance with the terms of this Agreement.

**"Governmental Requirements"** means all laws, ordinances, statutes, codes, rules, regulations, orders and decrees of the United States, the State, the County, the City, or any other political subdivision in which the Property is located, and of any other political subdivision, agency or instrumentality exercising jurisdiction over the Agency, the Developer or the Property.

**"Hazardous Materials"** means any substance, material, or waste which is or becomes, regulated by any local governmental authority, the State, or the United States Government, including, but not limited to, any material or substance which is (i) defined as a "hazardous waste," "extremely hazardous waste," or "restricted hazardous waste" under Section 25115, 25117 or 25122.7, or listed pursuant to Section 25140 of the California Health and Safety Code, Division 20, Chapter 6.5 (Hazardous Waste Control Law)), (ii) defined as a "hazardous



substance" under Section 25316 of the California Health and Safety Code, Division 20, Chapter 6.8 (Carpenter-Presley-Tanner Hazardous Substance Account Act), (iii) defined as a "hazardous material," "hazardous substance," or "hazardous waste" under Section 25501 of the California Health and Safety Code, Division 20, Chapter 6.95 (Hazardous Materials Release Response Plans and Inventory), (iv) defined as a "hazardous substance" under Section 25281 of the California Health and Safety Code, Division 20, Chapter 6.7 (Underground Storage of Hazardous Substances), (v) petroleum, (vi) friable asbestos, (vii) polychlorinated biphenyls, (viii) methyl tertiary butyl ether, (ix) listed under Article 9 or defined as "hazardous" or "extremely hazardous" pursuant to Article 11 of Title 22 of the California Code of Regulations, Division 4, Chapter 20, (x) designated as "hazardous substances" pursuant to Section 311 of the Clean Water Act (33 U.S.C. §1317), (xi) defined as a "hazardous waste" pursuant to Section 1004 of the Resource Conservation and Recovery Act, 42 U.S.C. §§6901, *et seq.* (42 U.S.C. §6903) or (xii) defined as "hazardous substances" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§9601, *et seq.*

**"Improvements"** means the improvements to be constructed by the Developer, or on Developer's behalf, pursuant to this Agreement. The Improvements include the Base Building Improvements to the Building and the Tenant Improvements to be made to the Tenant Premises, all in accordance with this Agreement. The Improvements also consist of the Exterior Improvements and Interior Improvements which may include both Base Building Improvements and Tenant Improvements.

**"Interior Improvements"** means the improvements to the interior of the Building in accordance with the terms of this Agreement.

**"Lease"** means that certain lease to be executed between Owner and Developer for approximately 8,725 usable (adjusted gross) square feet of space in the Building.

**"Notes"** when used herein refers to the Repayment Note and Participation Note collectively.

**"Notice"** shall mean a notice in the form prescribed by Section 6.1 hereof.

**"Owner"** means Palm Avenue Associates, a California company. Owner is not a party to this Agreement.

**"Participation Note"** means the promissory note evidencing Developer's obligation to make Annual Participation Payments to the Agency in the amount and manner as set forth in Section 3.2(B) hereof and the Participation Note. The form of the Participation Note is attached hereto as Attachment No. 5 and incorporated herein by reference.

**"Property"** means the real property located at 308 N. San Fernando Boulevard, Burbank, California.

**"Property Legal Description"** means the legal description of the Property's land, which is attached hereto as Attachment No. 1 and incorporated herein.

**"Redevelopment Plan"** means the Redevelopment Plan for the Redevelopment Project, adopted by Ordinance No. 2315 and amended by Ordinance Nos. 2452, 3052, 3387, 3510 and 3654 of the City Council of the City of Burbank, and incorporated herein.

**"Redevelopment Project"** means the City Centre Redevelopment Project, adopted by the City pursuant to the Redevelopment Plan.

**"Release of Construction Covenants"** means the document which evidences the Developer's satisfactory completion of the Improvements, as set forth in Section 2.11 hereof, in the form of Attachment No. 6 hereto which is incorporated herein.

**"Repayment Note"** means the promissory note evidencing Developer's obligation to repay the Agency Loan. The form of the Repayment Note is attached hereto as Attachment No. 4 and incorporated herein by reference.

**"Scope of Work"** means the Scope of Work attached hereto as Attachment No. 2 and incorporated herein, which describes the scope, amount and quality of the development of the Improvements to be constructed by the Developer.

**"Schedule of Performance"** means the Schedule of Performance attached hereto as Attachment No. 3 and incorporated herein, setting out the dates and/or time periods by which certain obligations set forth in this Agreement must be accomplished.

**"State"** means the State of California.

**"Tenant Improvements"** means those certain Tenant Improvements to be constructed and/or installed within the Tenant Premises by Developer as set forth in the Scope of Work, including fixtures and equipment.

**"Tenant Premises"** means the approximately 8,725 usable (adjusted gross) square feet of space in the Building to be leased by Developer from the Owner pursuant to the Lease.

**"Transfer"** is defined in Section 6.3 hereof.

## **Article II. REDEVELOPMENT OF THE PROPERTY**

**Section 2.1 Scope of Work.** The Developer shall develop or cause the development of the Improvements in accordance with the Scope of Work, the City's Municipal Code, and the plans, drawings and documents submitted by the Developer and reasonably approved by the Agency as set forth herein.

**Section 2.2 Design Review.**



(A) **Exterior Concept Drawings.** The Developer shall submit conceptual drawings or renderings for the Exterior Improvements (collectively, the "Exterior Concept Drawings"), which shall be subject the reasonable approval of the Agency.

(B) **Construction Drawings.** Within the time set forth in the Schedule of Performance, the Developer shall submit to the City detailed construction plans and drawings with respect to the Improvements (the "Construction Drawings").

(C) **Agency Review and Approval.** The Agency may review any and all aspects of the Construction Drawings for the Improvements, as well as any revisions to the Exterior Concept Drawings. The Developer acknowledges and agrees that the Agency is entitled to approve or disapprove the Exterior Concept Drawings, and the Construction Drawings for the Improvements in order to satisfy the Agency's obligation to promote sound development and redevelopment within the Redevelopment Project, and to promote a high level of design which will impact the surrounding development within the Redevelopment Project. The Developer shall not be entitled to any monetary damages or compensation as a result of the Agency's disapproval of the Exterior Concept Drawings or the Construction Drawings for the Improvements in accordance with the terms of this Agreement. Nothing herein shall be construed as a limitation on the City's building permit review and plan check process.

(D) **Standards for Disapproval.** After approval of the Exterior Concept Drawings, the Agency shall have the right to disapprove any revisions to the Exterior Concept Drawings in its reasonable discretion.

(i) The Agency shall have the right to disapprove in its reasonable discretion any of the Construction Drawings for the Exterior Improvements if said Construction Drawings do not conform to the approved Exterior Concept Drawings.

(ii) The Agency shall have the right to disapprove in its reasonable discretion any of the Construction Drawings if said Construction Drawings do not conform to the Scope of Work, this Agreement, the Redevelopment Plan or the Burbank Municipal Code (including without limitation Chapters 7 and 31 of the Burbank Municipal Code, and the California Building Code, the California Electrical Code, the California Mechanical Code, the California Plumbing Code, the California Fire Code, and the Uniform Fire Code to the extent the same have been adopted by reference into the Burbank Municipal Code).

(iii) The Agency may also disapprove the Construction Drawings if they are incomplete.

The Agency shall state in writing the reasons for disapproval within the time set forth in the Schedule of Performance. In the event that the Agency does not approve or disapprove such revisions within such time, the time for Developer to perform its obligations hereunder to submit plans or satisfy the conditions precedent to Agency Loan disbursements, shall be extended by one (1) day for every day by which the Agency's action exceeds the time provided for in the Schedule of Performance. Any changes must be consistent with the Scope of Work and any items previously approved hereunder. The



Developer, upon receipt of a disapproval based upon powers reserved by the Agency hereunder, shall revise such portions and resubmit to the Agency by the time established therefor in the Schedule of Performance.

(E) **Consultation and Coordination.** During the preparation of the Exterior Concept Drawings and Construction Drawings for the Improvements, staff of the Agency and the Developer shall hold regular progress meetings to coordinate their preparation, submission, and review. The staff of the Agency and the Developer shall communicate and consult informally as frequently as is necessary to ensure that the formal submittal of any documents to the Agency can receive prompt and thorough consideration. The Agency shall designate an Agency employee to serve as the project manager who is responsible for the coordination of the Agency's activities under this Agreement and for expediting the land use approval and permitting process.

(F) **Defects in Plans.** The Agency shall not be responsible either to the Developer, the Owner or other third parties in any way for any defects in the Exterior Concept Drawings or the Construction Drawings, nor for any structural or other defects in any work done according to the approved Exterior Concept Drawings or Construction Drawings, nor for any delays reasonably caused by the review and approval processes which are in accordance with this Section 2.2. The Developer shall hold harmless, indemnify and defend the Agency, the City and their officers, employees, agents and representatives from and against any claims, suits for damages to property or injuries to persons arising out of or in any way relating to defects in the Exterior Concept Drawings or the Construction Drawings, including without limitation the violation of any laws, and for defects in any work done according to the approved Exterior Concept Drawings and Construction Drawings.

**Section 2.3 Land Use Approvals.** Before commencement of construction of the Improvements or other works of improvement upon the Building or Property, and as a condition precedent to the disbursement of Agency Loan proceeds, the Developer shall, at its own expense, secure or cause to be secured any and all land use and other entitlements, permits and approvals which may be required for the Improvements by the City and any other governmental agency affected by such construction or work. The staff of the Agency shall cooperate with and assist the Developer in obtaining such entitlements, permits and approvals; provided, however, that this Agreement does not constitute the granting of such entitlements, permits and approvals. The Developer shall, without limitation, apply for and secure the following, and pay all costs, charges and fees associated therewith:

(A) All other permits and fees required by the City, County, and other governmental agencies with jurisdiction over the Improvements.

(B) Any environmental studies and documents required pursuant to the California Environmental Quality Act, Public Resources Code Sections 21000, *et seq.*

**Section 2.4 Costs of Construction.** Except to the extent otherwise expressly set forth in this Agreement, all of the cost of planning, designing, developing and constructing all of the Improvements, shall be borne solely by the Developer.



**Section 2.5 Environmental Condition of the Property.** Developer shall take all commercially reasonable precautions to prevent the release into the environment of any Hazardous Materials which are located in, on or under the Property. Such precautions shall include compliance with all applicable Governmental Requirements with respect to Hazardous Materials. In addition, Developer shall install and utilize such equipment and implement and adhere to such procedures as are consistent with commercially reasonable standards as respects the disclosure, storage, use, removal and disposal of Hazardous Materials.

**Section 2.6 Schedule of Performance.** The Developer shall submit all Exterior Concept Drawings and Construction Drawings, commence and complete all construction of the Improvements, and satisfy in all material respects all other obligations and conditions of this Agreement, and the Agency shall satisfy all of its obligations and conditions of this Agreement, within the times established therefor in the Schedule of Performance.

**Section 2.7 Insurance Requirements.** Developer shall take out and maintain or shall cause its general contractor to take out and maintain until the issuance of the Release of Construction Covenants pursuant to Section 2.11 of this Agreement, a commercial general liability policy in the amount of Two Million Dollars (\$2,000,000) combined single limit policy (which shall include, without limitation, automobile liability), which shall protect Developer, Agency, and City, and their respect officers, employees, representatives, agents, or volunteers from claims for such damages. Upon the issuance of a Release of Construction Covenants and until the later of (i) the date the Agency Loan is fully repaid (or forgiven) in accordance with the terms of the Repayment Note or (ii) the date the Participation Note expires or is terminated by Agency and Developer, the Developer shall take out and maintain a commercial general liability policy in the amount of Two Million Dollars (\$2,000,000) combined single limit policy (which shall include, without limitation, automobile liability), which shall protect Developer and Agency, and their respective officers, employees, agents, representatives and volunteers, from claims for such damages. Such policies shall be written on an occurrence form and shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insured's liability. Developer shall also furnish or cause to be furnished to Agency evidence satisfactory to the Agency that Developer (if applicable) and any contractor with whom it has contracted for the performance of work on the Property or otherwise pursuant to this Agreement carries workers' compensation insurance as required by law.

(A) All policies of insurance provided for in this Section 2.7, except for the workers' compensation insurance, shall name the Developer as the insured and Agency and its respective officers, employees, agents, representatives and volunteers, as additional insureds, as their respective interests may appear. The Developer shall also maintain property casualty insurance policies which insure in an amount at least equal to the replacement value of the Building as such value is anticipated to be with the Improvements. All policies of insurance required hereunder shall be primary and any insurance or self-insurance carried by the Agency shall be excess to the insurance required hereunder and shall not contribute to it. All policies of insurance required hereunder shall contain a waiver of subrogation in favor of the Agency and its officers, employees, agents, representatives, and volunteers. Developer agrees to



timely pay or cause to be timely paid all premiums for such insurance and, at its sole cost and expense, to comply and secure compliance with all insurance requirements necessary for the maintenance of such insurance. Developer agrees to submit policies of all insurance required by this Section 2.7 of this Agreement, or certificates and endorsement forms evidencing the existence thereof, to Agency, on or before the time such insurance coverage is required, indicating full coverage of the contractual liability imposed by this Agreement. At least thirty (30) days prior to expiration of any such policy, copies of renewal policies, or certificates and endorsement forms evidencing the existence thereof, shall be submitted to Agency. All policies shall be written by good and solvent insurers qualified to do business in California, with an A.M. Best's rating of not less than "A," and which are reasonably acceptable to the Agency Executive Director or designee. Any policy of insurance required hereunder shall be endorsed to provide that said policy shall not be cancelled or terminated by the insurer or the insured (Developer) without thirty (30) days prior written notice to the Agency.

**Section 2.8 Developer's Indemnity.** The Developer shall defend, indemnify, assume all responsibility for, and hold the Agency and its officers, employees, agents, representatives, and volunteers harmless from all claims, demands, damages, defense costs or liability of any kind or nature relating to the subject matter of this Agreement or the implementation thereof and for any damages to property or injuries to persons, including accidental death (including reasonable attorneys' fees and costs), which may be caused by any acts or omissions of the Developer under this Agreement, whether such activities or performance thereof be by the Developer or by anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer shall not be liable for and this indemnity shall not apply to property damage or bodily injury occasioned by the willful misconduct or negligence of the Agency or its officers, employees, agents, representatives or volunteers.

**Section 2.9 Rights of Access.** Prior to the issuance of a Release of Construction Covenants (as specified in Section 2.11 of this Agreement), for purposes of assuring compliance with this Agreement, representatives of the Agency shall have the right of access to the Property, or any portion thereof, without charges or fees, at normal construction hours during the period of construction for the purposes of this Agreement, including but not limited to, the inspection of the work being performed in constructing the Improvements so long as Agency representatives comply with all safety rules. The Agency (or its representatives) shall, except in emergency situations, notify the Developer prior to exercising its rights pursuant to this Section 2.8, and such representatives shall be accompanied by a representative of the Developer or its contractor while on the Property.

**Section 2.10 Compliance With Laws.** The Developer shall carry out the design, construction and operation of the Improvements in conformity with all applicable laws, including all applicable state labor standards, the City zoning and development standards, building, plumbing, mechanical and electrical codes, and all other provisions of the City's Municipal Code, and all applicable disabled and handicapped access requirements, including without limitation the Americans With Disabilities Act, 42 U.S.C. Section 12101, et seq.,



Government Code Section 4450, *et seq.*, Government Code Section 11135, *et seq.*, and the Unruh Civil Rights Act, Civil Code Sections 51, *et seq.*

(A) **Nondiscrimination in Employment.** Developer certifies and agrees that all persons employed or applying for employment by it, its affiliates, subsidiaries, or holding companies, and all subcontractors, bidders and vendors, are and will be treated equally by it without regard to, or because of race, color, religion, ancestry, national origin, sex, age, pregnancy, childbirth or related medical condition, medical condition (cancer related) or physical or mental disability, and in compliance with Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000, *et seq.*, the Federal Equal Pay Act of 1963, 29 U.S.C. Section 206(d), the Age Discrimination in Employment Act of 1967, 29 U.S.C. Section 621, *et seq.*, the Immigration Reform and Control Act of 1986, 8 U.S.C. Section 1324b, *et seq.*, 42 U.S.C. Section 1981, the California Fair Employment and Housing Act, Cal. Government Code Section 12900, *et seq.*, the California Equal Pay Law, Cal. Labor Code Section 1197.5, Cal. Government Code Section 11135, the Americans with Disabilities Act, 42 U.S.C. Section 12101, *et seq.*, and all other anti-discrimination laws and regulations of the United States and the State of California as they now exist or may hereafter be amended.

(B) **Taxes and Assessments.** The Developer shall pay prior to delinquency any and all taxes or assessments owing by Developer or assessed against Developer's leasehold interest, including possessory interest taxes, if applicable.

(C) **Prevailing Wages.** Developer shall comply with Labor Code Section 1720 *et seq.*, and its implementing regulations, regarding the payment of prevailing wages (the "Prevailing Wage Law") with regard to the construction of the Improvements. Developer shall be solely responsible for effectuating compliance with Prevailing Wage Law. Developer hereby releases from liability, and agrees to indemnify, defend, assume all responsibility for and hold the Agency and the City, and their officers, volunteers, employees, agents, and representatives, harmless from any and all claims, demands, actions, suits, proceedings, fines, penalties, damages, expenses resulting from, arising out of, or based upon Developer's acts or omissions pertaining to the compliance with the Prevailing Wage Law for the Improvements.

**Section 2.11 Release of Construction Covenants.** Promptly after completion of the Improvements in conformity with this Agreement, the Agency shall furnish the Developer with a "Release of Construction Covenants," substantially in the form of Attachment No. 9 hereto which is incorporated herein by reference. The Release of Construction Covenants shall be a conclusive determination of satisfactory completion of the Improvements on the Property.

If the Agency refuses or fails to furnish the Release of Construction Covenants, after written request from the Developer, the Agency shall, within ten (10) days of written request therefor, provide the Developer with a written statement of the reasons the Agency refused or failed to furnish the Release of Construction Covenants. The statement shall also contain the Agency's opinion of the actions the Developer must take to obtain the Release of Construction Covenants. Even if the Agency shall have failed to provide such written statement within such ten (10) day period, the Developer shall not be deemed entitled to the Release of Construction



Covenants. The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of the Developer to any holder of any mortgage, or any insurer of a mortgage securing money loaned to finance the Improvements, or any part thereof. Nor shall the Release of Construction Covenants constitute evidence of compliance with or satisfaction of the obligations with respect to repayment of the Agency Loan, including satisfaction of the Repayment Note. The Release of Construction Covenants is not a notice of completion as referred to in Section 3093 of the California Civil Code. The Release of Construction Covenants shall be in such form as to be permitted to be recorded in the Recorder's Office of Los Angeles County.

### **Article III. FINANCING OF THE IMPROVEMENTS**

**Section 3.1 Approval of Financing.** As required herein and as a Condition Precedent, Developer shall submit to Agency reasonable evidence that Developer has obtained sufficient equity capital and/or has obtained binding commitments for construction financing, subject to such lenders' reasonable, customary and normal conditions and terms, in an amount necessary to undertake the redevelopment of the Property and the construction of the Improvements in accordance with this Agreement. The Agency shall approve or disapprove such evidence of financing commitments within fifteen (15) days of receipt of a complete submission. If the Agency fails to approve or disapprove evidence of financing commitments within such fifteen day period, the time for Developer to perform its obligations hereunder, as set forth in the Schedule of Performance, shall be extended by one day for every day by which the Agency's action exceeds fifteen days. Approval shall not be unreasonably withheld, delayed or conditioned. If Agency shall disapprove any such evidence of financing, Agency shall do so by Notice to Developer stating the reasons for such disapproval and Developer shall promptly obtain and submit to Agency new evidence of financing. Agency shall approve or disapprove such new evidence of financing in the same manner and within the same times established in this Section 3.1 for the approval or disapproval of the evidence of financing as initially submitted to Agency. Developer shall close the approved construction financing prior to or concurrently with the Closing.

Such evidence of financing shall include the following: (a) a copy of a loan commitment(s) obtained by Developer from one or more financial institutions for the mortgage loan or loans for financing to fund the construction of the Improvements, subject to such lenders' reasonable, customary and normal conditions and terms, and/or (b) certifications from at least one member of the Developer reasonably satisfactory to the Agency that Developer has sufficient funds for such construction, and that such funds have been committed to such construction, sufficient to demonstrate that Developer has adequate funds to cover the difference between the total cost of the acquisition of the Property and the construction of the Improvements, less financing authorized by those loans set forth in subparagraph (a) above.

**Section 3.2 Agency Loan.** Subject to Developer's performance of all of the terms, covenants and conditions which are set forth herein, the Agency hereby agrees to loan to the Developer, and the Developer agrees to borrow from the Agency, a sum not to exceed Two Hundred Fifty Seven Thousand Eight Hundred Dollars (\$257,800) U.S. (the "Agency Loan").



The actual amount of the Agency Loan that will actually be disbursed to the Developer shall be in accordance with subdivision (F) of this Section 3.2.

(A) **Repayment of Agency Loan.** The Developer's obligation to repay the Agency Loan, and the terms of said repayment, shall be as set forth in the Repayment Note in the form of Attachment No. 4 attached hereto and incorporated herein.

(B) **Annual Participation Payment.** As additional consideration for the Agency Loan and the Agency's participation in this Agreement, Developer shall make "Annual Participation Payments" to the Agency, in the amount equal to three percent (3%) of the Gross Sales from the Tenant Premises in excess of Three Million Dollars (\$3,000,000) annual sales. Developer's obligation to make the Annual Participation Payments, and the terms and manner of said Annual Participation Payments, including the definition of Gross Sales from Tenant Premises, is more particularly set forth in the Participation Note in the form of Attachment No. 5 attached hereto and incorporated herein. All Annual Participation Payments shall be credited against the outstanding amount of the Repayment Note. It is understood that notwithstanding anything in this Agreement to the contrary, the total combined amount payable pursuant to the Repayment Note and the Participation Note equals the Agency Loan, the Repayment Note and the Participation Note both being security for the repayment of the Agency Loan. Once the Borrower has paid Annual Participation Payments equaling the amount of the Agency Loan plus interest, Annual Participation Payments shall cease to be payable.

(C) **Conditions to Disbursement of Agency Loan Proceeds/Closing.** The Agency's obligation to disburse proceeds of the Agency Loan to the Developer shall be contingent upon (1) the Closing and (2) the Developer's compliance with the disbursement procedures set forth in subsection (F) below. The Closing is subject to the fulfillment by Developer or waiver by Agency of each and all of the conditions precedent (1) through (7), inclusive, described below ("Conditions Precedent"), which are solely for the benefit of Agency, any of which may be waived by the Agency's Executive Director, or his or her designee, in his or her sole and absolute discretion:

1. **Execution of Documents.** Developer shall have executed and delivered to the Agency the Notes, and any other documents required hereunder.

2. **Permits and Land Use Approvals.** Developer shall have obtained each and all of the land use approvals, building permits and any other approvals necessary for the construction and development of the Improvements, in accordance with Section 2.3 of this Agreement.

3. **Evidence of Financing.** Developer shall have provided written proof reasonably acceptable to Agency that the Developer has obtained a commitment for equity contributions and loans, subject to customary conditions, for construction and/or permanent financing of the Improvements, and Agency shall have reasonably approved such financing commitments pursuant to Section 3.1 of this Agreement. The construction financing for the Improvements, if any, shall close prior to the disbursement of any Agency Loan Proceeds. In addition, the Developer shall have certified in writing to the Agency that the Agency Loan,



together with Developer's other financing, are together projected to be sufficient to pay for the development of the Improvements.

**4. Construction Contract.** Developer shall have provided to the Agency a signed copy of the construction contract(s) between the Developer and one or more duly licensed general contractors for the construction of the Improvements, certified by the Developer to be true and correct copies thereof, and the Agency's Assistant Executive Director, or his or her designee, shall have reasonably approved such contractor or contractors as having the experience and financial resources necessary to construct the Improvements.

**5. Proof of Insurance.** Developer shall have provided to the Agency a certificate of insurance that satisfies the requirements of Section 2.7 of this Agreement, including the required coverage and endorsements.

**6. Lease with Tenant.** Developer and Owner shall have executed the Lease obligating Developer to lease the Tenant Premises from Owner for a minimum of ten years. The Lease shall be consistent with this subsection. The Lease shall demise 8,725 adjusted square feet of the Building, i.e. the Tenant Premises, to the Tenant. The Lease shall be Net Net. The minimum annual monthly payment for the Tenant Premises shall be as follows:

Minimum Rent:	Years 1 & 2-\$12.50 per square foot
	Years 3 - 5- \$25.00 per square foot
	Years 6-10- \$27.50 per square foot

Percentage Rent:	Years 1-5 - 4% of annual sales in excess of \$5,453,125.00
	Years 6-10 - 4% of annual sales in excess of \$5,998,437.50

**7. No Default, Representations and Warranties.** Developer shall not be in default in any of its obligations under the terms of this Agreement. All representations and warranties of Borrower contained shall be true and correct in all material respects on and as of the date of the disbursement of the Agency Loan as though made at that time, and all covenants of Developer which are required to be performed prior to the disbursement of the Agency Loan shall have been performed by such date.

The Developer shall satisfy the Conditions Precedent, unless waived by the Executive Director or his or her designee, within the time set forth in the Schedule of Performance. However, in no event shall the Closing occur later than August 31, 2005, unless

said date is extended by the Executive Director, or his or her designee, in his or sole and absolute discretion.

**(D) Disbursement of Agency Loan Proceeds.** The Agency Loan proceeds shall be disbursed in accordance with this subsection. The Agency and Developer shall jointly develop a progress payment schedule for completed work items, consistent with the Scope of Work, for the Improvements. The Developer, upon completion of work items, may make a draw request for the work item(s) as set forth in the progress payment schedule for Improvements. The Developer shall provide written evidence of the accrual of actual costs and expenses for the Improvements. The Agency shall have the right to inspect the Building and Tenant Premises to insure that the Improvements have been constructed in accordance with the Scope of Work, Exterior Concept Drawings, and Construction Drawings. Upon the request for the last Agency Loan disbursement for Base Building Improvements, the Developer shall also obtain an estoppel certificate from the Owner, in a form acceptable to the Agency's legal counsel, that the Base Building Improvements have been built in accordance with the plans and specifications as may be required by the Lease between the Developer and Owner. The total amount of Agency Loan proceeds disbursed to Developer for Base Building Improvements shall not exceed the lesser of (i) fifty percent (50%) of actual Eligible Costs for said Base Building Improvements or (ii) \$257,800.

After disbursement of the maximum amount of Agency Loan proceeds permitted under this Section 3.7(F), any amounts less than the Maximum Agency Loan Amount not disbursed to Developer shall be used to reduce the base principal amount of the Notes (\$257,800).

#### **Article IV. COVENANTS AND RESTRICTIONS**

**Section 4.1 Use in Accordance with Redevelopment Plan.** The Developer covenants and agrees for itself, its successors, assigns, and every successor in interest to the Lease or any part thereof, that during the period of the Developer's leasing of the Tenant Premises, the Developer shall devote the Tenant Premises to the uses specified in the Redevelopment Plan and this Agreement for the periods of time specified therein. All uses conducted on and in the Property, including, without limitation, all activities undertaken by the Developer pursuant to this Agreement, shall conform to the Redevelopment Plan, and all applicable provisions of the City Municipal Code.

**Section 4.2 Maintenance Covenants.** The Developer shall maintain the Property and all improvements thereon, in compliance with all applicable provisions of the City Municipal Code, and the following maintenance requirements. Developer shall maintain the Property, Building, and Improvements in good condition and in accordance with the custom and practice generally applicable to first class facilities of a similar type located within Southern California. The Improvements (as the term is defined in the Agreement) shall be maintained in conformance and in compliance with the approved Construction Drawings and Exterior Concept Drawings, as the same may be amended from time to time with the approval of the City and reasonable commercial development maintenance standards for similar projects, including but not limited to the painting and cleaning of all exterior surfaces and other exterior



facades of the Building.

**Section 4.3 Nondiscrimination Covenants.** The Developer covenants by and for itself and any successor and assigns that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry in the lease, sublease, transfer, use, occupancy, tenure or enjoyment of the Property, nor shall the Developer itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or contractors, vendees or customers of the Property.

**Section 4.4 Effect of Violation of the Terms and Provisions of this Agreement After Completion of Construction.** The Agency is deemed the beneficiary of the terms and provisions of this Agreement, for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Agreement have been provided, without regard to whether the Agency has been, remains or is an owner of any land or interest therein in the Property or in the Redevelopment Project. The Agency shall have the right, if the Agreement or covenants are breached, to exercise all rights and remedies, and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches and to avail itself of the rights granted herein to which it or any other beneficiaries of this Agreement and covenants may be entitled. The covenants contained in this Agreement shall remain in effect for the periods described herein, specifically including, without limitation, the following:

(A) The environmental covenants set forth in Sections 2.5 shall remain in effect as long as Developer, or any approved successor or assignee to this Agreement, leases, occupies, or uses the Property, or any portion thereof.

(B) The covenants pertaining to use of the Property which are set forth in Section 4.1 shall remain in effect until the earlier of (i) the date that Developer or an approved successor or assignee to this Agreement ceased to lease the Tenant Premises, or (ii) the expiration of the term of the Redevelopment Plan.

(C) The covenants against discrimination, as set forth in Section 4.3 shall remain in effect as long as Developer, or any approved successor or assignee to this Agreement, leases, occupies or uses the Property, or any portion thereof.

(D) The indemnity obligations, as set forth in the first paragraph of Section 2.8 hereof, shall remain in effect until the expiration of applicable statutes of limitations.

(E) The obligations to comply with law, as set forth in Section 2.10 hereof, shall remain in effect until the earlier of (i) Developer or an approved successor or assignee to this Agreement no longer leasing the Tenant Premises, or (ii) for the term of the Redevelopment Plan.



## **Article V. DEFAULTS AND REMEDIES**

**Section 5.1 Default Defined and Cure.** A failure by either party to perform any action or covenant required by this Agreement, the Repayment Note or the Participation Note, within the time periods provided herein following notice and failure to cure as described hereafter, constitutes a "Default" under this Agreement. A party claiming a Default shall give written notice of Default to the other party specifying the Default complained of. Except as otherwise expressly provided in this Agreement, the claimant shall not institute any proceeding against any other party, and the other party shall not be in Default if such party cures such default within ten (10) days if the claimed Default is a failure to pay amounts due pursuant to the Repayment Note, or thirty (30) days from receipt of such notice for all other claimed Defaults hereunder, unless a longer cure period is provided in this Agreement, the Notes, or other applicable document. However, in the event that such Default is other than a failure to pay money and is of such a nature that it cannot reasonably be cured within thirty (30) days from receipt of such notice, the claimant shall not institute any proceeding against the other party, and the other party shall not be in Default if such party immediately upon receipt of such notice, with due diligence, commences to cure, correct or remedy such failure or delay and completes such cure, correction or remedy with diligence as soon as reasonably possible thereafter.

**Section 5.2 Institution of Legal Actions.** In addition to any other rights or remedies and subject to the restrictions otherwise set forth in this Agreement, either party may institute an action at law or equity to seek specific performance of the terms of this Agreement, or to cure, correct or remedy any Default, to recover damages for any Default, or to obtain any other remedy consistent with the purpose of this Agreement. Such legal actions must be instituted in the Superior Court of the County of Los Angeles, State of California, or in the United States District Court for the Central District of California.

**Section 5.3 Termination Prior to Closing.** In the event the Closing fails to occur by the date specified in the Schedule of Performance as a result of Developer's failure to satisfy, or obtain waivers of, the Conditions Precedent, then the Agency may terminate this Agreement by providing written notice to the Developer. In such case, this Agreement shall terminate and neither Agency nor Developer shall have any further recourse against each other.

**Section 5.4 Rights and Remedies Are Cumulative.** Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party.

**Section 5.5 Inaction Not a Waiver of Default.** Any failures or delays by either party in asserting any of its rights and remedies as to any Default shall not operate as a waiver of any Default or of any such rights or remedies, or deprive either such party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect,

assert or enforce any such rights or remedies.

**Section 5.6 Applicable Law.** The laws of the State of California shall govern the interpretation and enforcement of this Agreement.

**Section 5.7 Non-Liability of Officials and Employees of the Agency.** No member, official or employee of the Agency or the City shall be personally liable to the Developer, or any successor in interest, in the event of any Default or breach by the Agency or for any amount which may become due to the Developer or its successors, or on any obligations under the terms of this Agreement.

**Section 5.8 Attorneys' Fees.** In any action between the parties to interpret, enforce, reform, modify, rescind, or otherwise in connection with any of the terms or provisions of this Agreement, the prevailing party in the action shall be entitled, in addition to damages, injunctive relief, or any other relief to which it might be entitled, reasonable costs and expenses including, without limitation, litigation costs and reasonable attorneys' fees.

**Section 5.9 Acceptance of Service of Process.** In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Agency's Secretary or Executive Director or in such other manner as may be provided by law. In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made in such manner as may be provided by law.



## Article VI. GENERAL PROVISIONS

**Section 6.1 Notices, Demands and Communications Between the Parties.** Any approval, disapproval, demand, document or other notice ("Notice") which either party may desire to give to the other party under this Agreement must be in writing and may be given by any commercially acceptable means to the party to whom the Notice is directed at the address of the party as set forth below, or at any other address as that party may later designate by Notice.

To Agency:               Redevelopment Agency of the City of Burbank  
275 East Olive Avenue  
Box 6459  
Burbank, California 91510  
Attention: Executive Director

To Developer:           Palliser Furniture Ltd.  
70 Lexington Park  
Winnipeg, Manitoba  
Canada R2G 4H2  
Attn: Mr. Reginald Kliewer

Any written notice, demand or communication shall be deemed received immediately if delivered by hand and shall be deemed received on the third day from the date it is postmarked if delivered by registered or certified mail.

**Section 6.2 Enforced Delay; Extension of Times of Performance.** In addition to specific provisions of this Agreement, performance by either party hereunder shall not be deemed to be in Default, and all performance and other dates specified in this Agreement shall be extended, where delays or Defaults are due to events beyond the reasonable control of the parties, which may include without limitation the following: war; insurrection; strikes; lockouts; riots; floods; earthquakes; fires; casualties; acts of God; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions or priority; litigation (other than eminent domain actions); unusually severe weather; inability to secure necessary labor, materials or tools; delays of any contractor, subcontractor or supplier; acts or omissions of the other party; acts or failures to act of the City or any other public or governmental agency or entity (other than the acts or failures to act of the Agency which shall not excuse performance by the Agency); or any other causes beyond the control or without the fault of the party claiming an extension of time to perform. Notwithstanding anything to the contrary in this Agreement, an extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the party claiming such extension is sent to the other party within thirty (30) days of the commencement of the cause. Times of performance under this Agreement may also be extended in writing by the mutual agreement of Agency and Developer. Notwithstanding any provision of this Agreement to the contrary, the lack of funding to complete the Improvements shall not constitute grounds of enforced delay pursuant

to this Section 6.2. Notwithstanding any provision of this Agreement or the Repayment Note to the contrary, a default of the Lease by the Owner, or a failure of the Developer to meet the "Open Business Obligation" (as defined in Section 3 of the Repayment Note) that is caused by an act or omission of the Owner, shall not constitute grounds of enforced delay of Developer's obligation to make partial or complete Annual Loan Payments in accordance with the Repayment Note.

### **Section 6.3 Transfers of Interest in Property or Agreement.**

(A) **Prohibition.** The qualifications and identity of the Developer are of particular concern to the Agency. It is because of those qualifications and identity that the Agency has entered into this Agreement with the Developer. Accordingly, for the period commencing upon the date of this Agreement and until the Repayment Note has been paid in full (or forgiven as permitted therein) and the term of the Participation Note has expired (or been cancelled), (a) no voluntary or involuntary successor in interest of the Developer shall acquire any rights or powers under this Agreement, (b) nor shall the Developer make any transfer, conveyance, assignment, sublease, or license of the whole or any part of the Tenant Premises or the Improvements thereon, except as expressly set forth herein.

(B) **Permitted Transfers Prior to Release of Construction Covenants.** Notwithstanding any other provision of this Agreement to the contrary, Agency approval of a Transfer shall not be required in connection with any of the following:

- (i) Any Transfer to an entity or entities in which Developer retains 51% ownership and management and control of the transferee entity or entities.
- (ii) The conveyance or dedication of any portion of the Property to the City or other appropriate governmental agency, or the granting of easements or permits to facilitate construction of the Improvements.
- (iii) Any requested assignment for financing purposes

In the event of a Transfer by Developer under subparagraph (A) above not requiring the Agency's prior approval, Developer nevertheless agrees that at least thirty (30) days prior to such Transfer it shall give written notice to Agency of such assignment and satisfactory evidence that the assignee has assumed in writing through an assignment and assumption agreement all of the obligations of this Agreement. Such assignment shall not, however, release the assigning Developer from any obligations to the Agency hereunder.

(C) **Agency Consideration of Requested Transfer.** The Agency agrees that it will not unreasonably withhold, delay or condition approval of a request for approval of a Transfer made pursuant to this Section 6.3, provided the Developer delivers written notice to the Agency requesting such approval. Such notice shall be accompanied by evidence regarding the proposed transferee's development and/or operational qualifications and experience, and its financial commitments and resources, in sufficient detail to enable the Agency to evaluate the proposed assignee or purchaser pursuant to the criteria set forth in this Section 6.3 and as



reasonably determined by the Agency. The Agency may, in considering any such request, take into consideration such factors as (i) the quality of any new and/or replacement tenant (ii) the current financial condition of the transferee, and similar factors. The Agency agrees not to unreasonably withhold, delay or condition its approval of any such requested Transfer, taking into consideration the foregoing factors. Notwithstanding the foregoing, the Notes are not assignable by Developer except in compliance with the terms of the Notes and not unless Agency, in its sole and absolute discretion, determines that any such proposed assignee can provide adequate security to secure the Notes, it being agreed and understood that the Agency is permitting the Developer to be a self-guarantor for the Notes based upon Developer's financial condition.

An assignment and assumption agreement in form reasonably satisfactory to the Agency's legal counsel shall also be required for all proposed Transfers. Within thirty (30) days after the receipt of the Developer's written notice requesting Agency approval of a Transfer pursuant to this Section 6.3, the Agency shall either approve or disapprove such proposed assignment or shall respond in writing by stating what further information, if any, the Agency reasonably requires in order to determine the request complete and determine whether or not to grant the requested approval. Upon receipt of such a response, the Developer shall promptly furnish to the Agency such further information as may be reasonably requested.

**(D) Successors and Assigns.** All of the terms, covenants and conditions of this Agreement shall be binding upon the Developer and its permitted successors and assigns. Whenever the term "Developer" is used in this Agreement, such term shall include any other permitted successors and assigns as herein provided.

**(E) Assignment by Agency.** The Agency may assign or transfer any of its rights or obligations under this Agreement to the City at any time without the consent of the Developer.

**(F) Relationship Between Agency and Developer.** It is hereby acknowledged that the relationship between the Agency and the Developer is not that of a partnership or joint venture and that the Agency and the Developer shall not be deemed or construed for any purpose to be the agent of the other. Accordingly, except as expressly provided herein or in the Attachments hereto, the Agency shall have no rights, powers, duties or obligations with respect to the development, operation, maintenance or management of the Improvements. The Developer agrees to indemnify, hold harmless and defend the Agency from any claim made against the Agency arising from a claimed relationship of partnership or joint venture between the Agency and the Developer with respect to the development, operation, maintenance or management of the Property or the Improvements.

**Section 6.4 Agency Approvals and Actions.** The Agency shall maintain authority of this Agreement and the authority to implement this Agreement through the Agency Executive Director (or his duly authorized representative). The Agency Executive Director shall have the authority to make approvals, issue interpretations, waive provisions, and/or enter into certain amendments of this Agreement on behalf of the Agency so long as such



actions do not materially or substantially change the uses or development permitted on the Property, or add to the costs incurred or to be incurred by the Agency as specified herein, and such approvals, interpretations, waivers and/or amendments may include extensions of time to perform as specified in the Schedule of Performance. All other material and/or substantive interpretations, waivers, or amendments shall require the consideration, action and written consent of the Agency Board.

**Section 6.5 Counterparts.** This Agreement may be signed in multiple counterparts which, when signed by all parties, shall constitute a binding agreement. This Agreement is executed in two (2) originals, each of which is deemed to be an original.

**Section 6.6 Integration.** This Agreement contains the entire understanding between the parties relating to the transaction contemplated by this Agreement, notwithstanding any previous negotiations or agreements between the parties or their predecessors in interest with respect to all or any part of the subject matter hereof. All prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged in this Agreement and shall be of no further force or effect. Each party is entering this Agreement based solely upon the representations set forth herein and upon each party's own independent investigation of any and all facts such party deems material. This Agreement includes Attachment Nos. 1 through 9, which are incorporated herein.

**Section 6.7 Titles and Captions.** Titles and captions are for convenience of reference only and do not define, describe or limit the scope or the intent of this Agreement or of any of its terms. Reference to section numbers are to sections in this Agreement, unless expressly stated otherwise.

**Section 6.8 Interpretation.** As used in this Agreement, masculine, feminine or neuter gender and the singular or plural number shall each be deemed to include the others where and when the context so dictates. The word "including" shall be construed as if followed by the words "without limitation." This Agreement shall be interpreted as though prepared jointly by both parties.

**Section 6.9 No Waiver.** A waiver by either party of a breach of any of the covenants, conditions or agreements under this Agreement to be performed by the other party shall not be construed as a waiver of any succeeding breach of the same or other covenants, agreements, restrictions or conditions of this Agreement.

**Section 6.10 Modifications.** Any alteration, change or modification of or to this Agreement, in order to become effective, shall be made in writing and in each instance signed on behalf of each party.

**Section 6.11 Severability.** If any term, provision, condition or covenant of this Agreement or its application to any party or circumstances shall be held, to any extent, invalid or unenforceable, the remainder of this Agreement, or the application of the term, provision, condition or covenant to persons or circumstances other than those as to whom or which it is held invalid or unenforceable, shall not be affected, and shall be valid and enforceable to the



fullest extent permitted by law.

**Section 6.12 Computation of Time.** The time in which any act is to be done under this Agreement is computed by excluding the first day (such as the day escrow opens), and including the last day, unless the last day is a holiday or Saturday or Sunday, and then that day is also excluded. The term "holiday" shall mean all holidays as specified in Section 6700 and 6701 of the California Government Code. If any act is to be done by a particular time during a day, that time shall be Pacific Time Zone time.

**Section 6.13 Legal Advice.** Each party represents and warrants to the other the following: they have carefully read this Agreement, and in signing this Agreement, they do so with full knowledge of any right which they may have; they have received independent legal advice from their respective legal counsel as to the matters set forth in this Agreement, or have knowingly chosen not to consult legal counsel as to the matters set forth in this Agreement; and, they have freely signed this Agreement without any reliance upon any agreement, promise, statement or representation by or on behalf of the other party, or their respective agents, employees, or attorneys, except as specifically set forth in this Agreement, and without duress or coercion, whether economic or otherwise.

**Section 6.14 Time of Essence.** Time is expressly made of the essence with respect to the performance by the Agency and the Developer of each and every obligation and condition of this Agreement.

**Section 6.15 Cooperation.** Each party agrees to cooperate with the other in this transaction and, in that regard, to sign any and all documents which may be reasonably necessary, helpful, or appropriate to carry out the purposes and intent of this Agreement including, but not limited to, releases or additional agreements.

**Section 6.16 Conflicts of Interest.** No member, official or employee of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to the Agreement which affects his personal interests or the interests of any corporation, partnership or association in which he is directly or indirectly interested.

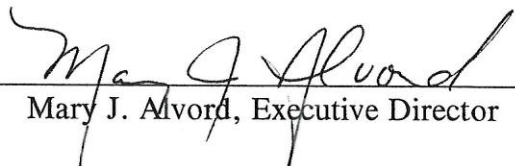
**Section 6.17 Time for Acceptance of Agreement by Agency.** This Agreement, when executed by the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency on or before fifteen (15) days after signing and delivery of this Agreement by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to a further extension of time for the authorization, execution and delivery of this Agreement.

[END OF TEXT. SIGNATURE PAGE TO FOLLOW.]

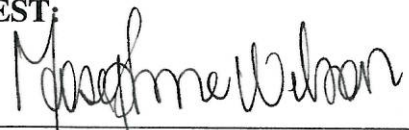
IN WITNESS WHEREOF, the Agency and the Developer have executed this Commercial Rehabilitation Agreement as of the date set forth above.

**AGENCY:**

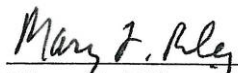
**REDEVELOPMENT AGENCY OF THE CITY  
OF BURBANK**, a public body, corporate and  
politic

By:   
Mary J. Alvord, Executive Director

**ATTEST:**


  
Josephine Wilson, Deputy Secretary

Approved as to Form and Legal Content  
Dennis A. Barlow, City Attorney/Agency Counsel

  
Mary F. Riley, Sr. Asst. City Attorney

**DEVELOPER:**

**PALLISER FURNITURE LTD.** a Canadian  
federal limited liability corporation

By:   
Its: J. Reginald Kiewer  
Sr. V.P. Finance.



**ATTACHMENT NO. 1**

**LEGAL DESCRIPTION**

That land situated in the County of Los Angeles, State of California, City of Burbank, described as follows:

(see attached)



DESCRIPTION OF THE PROPERTIES


PARCEL 2:

THAT PORTION OF LOTS 13, 15, 17 AND 19 IN BLOCK 50 OF TOWN OF BURBANK, IN THE CITY OF BURBANK, AS PER MAP RECORDED IN BOOK 17 PAGE 19 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT 19; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LOT 19, A DISTANCE OF 106 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTHEASTERLY AT RIGHT ANGLES TO THE SAID SOUTHWESTERLY LINE OF SAID LOT 19 AND PARALLEL WITH THE SOUTHEASTERLY LINES OF SAID LOTS 13, 15, 17 AND 19, A DISTANCE OF 170 FEET; THENCE SOUTHEASTERLY PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID LOT 13, A DISTANCE OF 56 FEET; THENCE AT RIGHT ANGLES AND PARALLEL WITH THE SOUTHEASTERLY LINES OF LOTS 13, 15, 17 AND 19 TO THE SOUTHWESTERLY LINE OF SAID LOT 19; THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE OF SAID LOT 19, A DISTANCE OF 56 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THAT PORTION OF LOT 13 IN BLOCK 50 OF TOWN OF BURBANK, IN THE CITY OF BURBANK, AS PER MAP RECORDED IN BOOK 17 PAGES 19 TO 22 INCLUSIVE OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID BLOCK 50; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK, A DISTANCE OF 106.00 FEET TO A LINE THAT IS PARALLEL WITH THE SOUTHEASTERLY LINE OF SAID BLOCK 50; THENCE NORTHEASTERLY ALONG SAID PARALLEL LINE 160.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID PARALLEL LINE 10.00 FEET TO A LINE THAT IS PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID BLOCK 50; THENCE SOUTHEASTERLY ALONG THE LAST SAID PARALLEL LINE 106.00 FEET TO THE SOUTHEASTERLY LINE 10.00 FEET; THENCE NORTHWESTERLY 106.00 FEET TO THE TRUE POINT OF BEGINNING.





## **ATTACHMENT NO. 2**

### **SCOPE OF WORK**

#### Base Building Improvements

Developer shall construct base building improvements including, but not limited to new flooring, interior walls, bathrooms, electrical, new facades, HVAC and mezzanine upgrades, as identified on the attached list. See Exhibit A, attached hereto.

#### Tenant Improvements

Developer shall cause EQ3 to design and construct tenant improvements in the same high quality as fully operational EQ3 stores with similar products, quality and service as those EQ3 stores existing in Los Angeles County as of the date of this Agreement.

The Agency and Developer agree that above Scope of Work may be amended as per agreement between Developer and Landlord.



### ATTACHMENT NO. 3

#### SCHEDULE OF PERFORMANCE

**Submission of Commercial Rehabilitation**

**Agreement.** Developer shall submit to the Agency a copy of the Commercial Rehabilitation Agreement duly executed by the Developer.

On or before April 22, 2005.

**Agency Approval of Commercial**

**Rehabilitation Agreement.** Agency shall approve or disapprove the Commercial Rehabilitation Agreement.

Within 15 days after the Developer's submission of an executed Commercial Rehabilitation Agreement.

**Submission of Construction Drawings.**

Developer shall submit a complete set of Construction Drawings for the Base Building Improvements to the Building/Engineering and Redevelopment Divisions.

Within 30 days after execution of the Agreement.

**Building/Engineering and Redevelopment Review of Construction Drawings.**

The Building/Engineering and Redevelopment Divisions shall approve or disapprove the Construction Drawings for the Base Building Improvements.

Within 15 days after a complete submittal.

**Revisions to Construction Drawings by the Developer.**

Developer shall prepare revised Construction Drawings for the Base Building Improvements as necessary, and resubmit them to the Building/Engineering and Redevelopment Divisions for review.

Within 5 business days after receipt.

**Final Review of Construction Drawings.** The Building/Engineering and Redevelopment Divisions shall approve or disapprove the revisions submitted by the Developer for the Base Building Improvements and the Developer shall be ready to obtain building permits, provided that the revisions necessary to accommodate the Department's comments.

Within 10 days after submittal.





**Execution of Lease Agreement.** Developer shall execute a lease agreement with EQ3/Pallister for a minimum of ten years and for approximately 8,725 square foot of space.

No later than May 30, 2005.

**Conditions Precedent to Agency Loan.** Developer and Agency shall satisfy (or waive) all of their respective Conditions Precedent to Closing for the Agency Loan.

No later than July 30, 2005.

**Completion of Base Improvements.** Developer shall complete Base Building Improvements to the building.

No later than November 1, 2003.

**Submission of Exterior Concept Drawings.** Developer shall cause EQ3 to submit a set of complete Exterior Concept Drawings to the Redevelopment Division for the Exterior Improvements to the Building.

Within 15 days after execution of the Lease.

**Review of Exterior Concept Drawings.** Redevelopment Division shall approve or disapprove Exterior Concept Drawings.

Within 5 business days after complete submittal.

**Revisions to Exterior Concept Drawings.** Developer shall cause EQ3 to prepare revised Exterior Concept Drawings to the Redevelopment Division.

Within 5 business days after receipt of Redevelopment comments.

**Final Review of Exterior Concept Drawings.** The Redevelopment Division shall approve or disapprove revisions to the Exterior Concept Drawings submitted by EQ3.

Within 10 business days after re-submittal.

**Completion of Tenant Improvements.** Developer shall cause EQ3 to Complete the Tenant Improvements to the Building.

On or before October 31, 2005.

**Opening for Business for EQ3.**

On or before October 31, 2005.

The Agency and Developer agree that above Schedule of Performance may be amended as per agreement between Developer and Landlord.

**ATTACHMENT NO. 4**  
**REPAYMENT NOTE**

\$257,800 (the "Note Amount")  
\_\_\_\_\_, 2005

Burbank, California

**FOR VALUE RECEIVED, PALLISER FURNITURE LTD.**, a Canadian federal limited liability corporation \_\_\_\_\_ (the "Borrower"), promises to pay to the **REDEVELOPMENT AGENCY OF THE CITY OF BURBANK**, a public body, corporate and politic (the "Agency"), or order, at the Agency's office at 275 East Olive Avenue, Burbank, California 91502, or such other place as the Agency may designate in writing, the sum of Two Hundred Fifty-Seven Thousand, Eight Hundred Dollars (\$257,800) (the "Note Amount") plus interest as set forth herein, in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

1. **Agreement.** This Repayment Note (the "Repayment Note") is given in accordance with that certain Commercial Rehabilitation Agreement executed by the Agency and Borrower, dated as of April 20, 2005 (the "Agreement"). This Repayment Note evidences the Borrower's obligation to repay the Agency Loan made by the Agency under the terms of the Agreement. The rights and obligations of the Borrower and the Agency under this Repayment Note shall be governed by the Agreement and by the additional terms set forth in this Repayment Note. In the event of any inconsistencies between the terms of this Repayment Note and the terms of the Agreement, and/or any other document related to the Note Amount, the terms of this Repayment Note shall prevail.

2. **Interest.** The Note Amount shall bear interest at a rate of \_\_\_\_\_ percent (\_\_\_%), which represents the Prime Rate of interest (as published in the Wall Street Journal) as of the date the Agreement was executed plus two percentage points (2%) (the "Interest Rate"), amortized over the ten-year period of this Repayment Note.

3. **Repayment of Note Amount.** Subject to the provisions set forth herein, commencing on the first anniversary of the Note Date and on each of the nine anniversary dates thereafter until the Note Amount (or the portion thereof actually outstanding) is paid, Borrower shall make annual installment payments of principal and interest to Agency ("Annual Payments"). The amount of annual payments shall be the amortized amount of principal and interest necessary to repay this Repayment Note within the Term, calculated by deducting from the principal amount of this Repayment Note any Agency Loan proceeds not disbursed to Borrower under the terms of the Agreement. Notwithstanding the foregoing, each of the Annual Payments due from Borrower hereunder shall be fully and irrevocably forgiven and excused (or Borrower shall be deemed to have been given a full credit against such payment(s)) unless, on the applicable payment date(s), Borrower has failed to satisfy the "Leasing Obligation" (as defined below). The "Leasing Obligation" shall mean the obligation of the Borrower (or any of its subsidiary or related corporations, including EQ3) to lease the Tenant



Premises of the Property from the Owner for the ten-year period beginning on the Note Date (Tenant, Tenant Premises, and Property are defined in the Agreement). For purposes of this Repayment Note, the "Leasing Obligation" also means that the Tenant Premises shall be occupied by the Borrower (or any of its subsidiary or related corporations, including EQ3) and utilized for a fully-operational EQ3 store with similar products, quality, and service to the EQ3 stores existing in California as of the Date of Agreement (or other fully-operational retail business of another tenant in the event a tenant other than EQ3 is approved as by the Agency in accordance with Section 6.3 of the Agreement). No occupant other than EQ3 shall trigger the Annual Loan Payment forgiveness of this Section 3 of this Repayment Note, unless said occupant is approved as the "Tenant" in the reasonable discretion of the Agency. Moreover, notwithstanding any of the foregoing, for the Annual Payment due on the first anniversary date of this Repayment Note, the Annual Payment shall not be forgiven if Developer has not leased the Tenant Premises from the Owner and/or the EQ3 store is not open for business on or before August 31, 2005, as may be extended by Section 6.2 of the Agreement. The forgiveness of each Annual Payment shall be calculated on a pro rata basis if the Tenant Premises are only leased by Borrower for a portion of a year. By way of example and without limitation, if the Tenant Premises are only leased for six months during one of the anniversary years, the Borrower shall be required to make an annual installment payment equal to one-half of an Annual Payment. **Notwithstanding anything to the contrary in this Repayment Note, the Agreement, or the Participation Note (as defined in the Agreement), the Borrower's combined payments actually made (and not forgiven) under this Repayment Note and payments made under the Participation Note shall not exceed the original Note Amount of this Repayment Note plus all interest accrued pursuant to Section 2 of this Repayment Note.**

All Annual Participation Payments pursuant to the Participation Note shall be credited against the outstanding amount of this Repayment Note. It is understood that notwithstanding anything in this Repayment Note or the Participation Note to the contrary, the total combined amount payable pursuant to the Repayment Note and the Participation Note equals the Agency Loan, the Repayment Note and the Participation Note both being security for the repayment of the Agency Loan. Once the Borrower has paid Annual Participation Payments equaling the amount of the Agency Loan plus interest, Annual Participation Payments shall cease to be payable.

**4. Term of Note.** Subject to the provisions hereof, the term of this Repayment Note shall be ten years from the Note Date. There shall be no prepayment penalty on this Repayment Note.

**5. Waivers**

**a.** Borrower expressly agrees that this Repayment Note or any payment hereunder may be extended from time to time at the Agency's sole discretion and that the Agency may accept security in consideration for any such extension or release any security for this Repayment Note at its sole discretion all without in any way affecting the liability of Borrower.

b. No extension of time for payment of this Repayment Note made by agreement by the Agency with any person now or hereafter liable for the payment of this Repayment Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Repayment Note, either in whole or in part.

c. The obligations of Borrower under this Repayment Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Repayment Note for any reasons whatsoever.

d. Borrower waives presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights of interests in or to properties securing of this Repayment Note, and the benefit of any exemption under any homestead exemption laws, if applicable.

e. No previous waiver and no failure or delay by Agency in acting with respect to the terms of this Repayment Note shall constitute a waiver of any breach, default, or failure or condition under this Repayment Note or the obligations secured thereby. A waiver of any term of this Repayment Note or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

**6. Attorneys' Fees and Costs.** Borrower agrees that if any amounts due under this Repayment Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Repayment Note, whether or not suit is filed.

**7. Joint and Several Obligation.** Except as otherwise provided in Section 19 herein, this Repayment Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, successors and assigns.

**8. Amendments and Modifications.** This Repayment Note may not be changed orally, but only by an amendment in writing signed by Borrower and by the Agency.

**9. Agency May Assign.** Agency may, at its option, assign its right to receive payment under this Repayment Note without necessity of obtaining the consent of the Borrower.

**10. Borrower Assignment Prohibited.** This Repayment Note is not assignable by Borrower unless the Agency determines in its reasonable discretion that such successor tenant/occupant is an equal or better quality retail tenant than EQ3. As set forth in Section 6.3 of the Agreement, Borrower shall not assign this Repayment Note unless the Agency determines, in its sole and absolute discretion, that the proposed assignee can provide adequate security to secure this Note, it being agreed and understood that the Agency is permitting the Borrower to be a self-guarantor for this Repayment Note based upon Borrower's financial condition.



**11. Terms.** Any terms not separately defined herein shall have the same meanings as set forth in the Agreement.

**12. Acceleration and Other Remedies.** Upon: (a) the occurrence of an event of Default as defined in the Agreement, (b) failure to make an Annual Payment within thirty (30) days of the Agency notifying Borrower in writing of said Annual Payment being due, or (c) except as otherwise permitted in the Agreement or this Repayment Note, Borrower assigning or attempting to assign its interests, rights and obligations under the Agreement or this Repayment Note, Agency may, at Agency's option, declare the outstanding principal amount of this Repayment Note, if any, as may be adjusted pursuant to Section 3 hereof, to be due and payable immediately, and upon such declaration, such principal and interest shall immediately become and be due and payable without demand or notice. All costs of collection, including, but not limited to, reasonable attorneys' fees and all expenses incurred by the Agency in connection with the payment of any and all amounts owing under this Repayment Note may be added to the principal hereunder and shall accrue interest as provided herein. Any delay or omission on the part of the Agency in exercising any right hereunder or under the Agreement shall not operate as a waiver of such right, or of any other right. No single or partial exercise of any right or remedy hereunder or under the Agreement or any other document or agreement shall preclude other or further exercises thereof, or the exercise of any other right or remedy. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of Agency's right to either require prompt payment when due of all other sums payable hereunder or to declare an Event of Default for failure to make prompt or complete payment.

**13. Successors and Assigns.** Whenever "Agency" is referred to in this Repayment Note, such reference shall be deemed to include the Redevelopment Agency of the City of Burbank and its successors and assigns, including, without limitation, any subsequent assignee or holder of this Repayment Note. All covenants, provisions and agreements by or on behalf of Borrower, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of the Agency and Agency's successors and assigns.

**14. Usury.** It is the intention of Borrower and Agency to conform strictly to the Interest Law, as defined below, applicable to this loan transaction. Accordingly, it is agreed that notwithstanding any provision to the contrary in this Repayment Note, or in any of the documents securing payment hereof or otherwise relating hereto, the aggregate of all interest and any other charges or consideration constituting interest under the applicable Interest Law that is taken, reserved, contracted for, charged or received under this Repayment Note, or under any of the other aforesaid agreements or otherwise in connection with this loan transaction, shall under no circumstances exceed the maximum amount of interest allowed by the Interest Law applicable to this loan transaction. If any excess of interest in such respect is provided for in this Repayment Note, or in any of the documents securing payment hereof or otherwise relating hereto, then, in such event:

- a. the provisions of this paragraph shall govern and control;

b. neither Borrower nor Borrower's heirs, legal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest allowed by the Interest Law applicable to this loan transaction;

c. any excess shall be deemed canceled automatically and, if theretofore paid, shall be credited on this Repayment Note by Agency or, if this Repayment Note shall have been paid in full, refunded to Borrower; and

d. the effective rate of interest shall be automatically subject to reduction to the Maximum Legal Rate of Interest (as defined below), allowed under such Interest Law, as now or hereafter construed by courts of appropriate jurisdiction. To the extent permitted by the Interest Law applicable to this loan transaction, all sums paid or agreed to be paid to Agency for the use, forbearance or detention of the indebtedness evidenced hereby shall be amortized, prorated, allocated and spread throughout the full term of this Repayment Note. For purposes of this Repayment Note, "Interest Law" shall mean any present or future law of the State of California, the United States of America, or any other jurisdiction which has application to the interest and other charges under this Repayment Note. The "Maximum Legal Rate of Interest" shall mean the maximum rate of interest that Agency may from time to time charge Borrower, and under which Borrower would have no claim or defense of usury under the Interest Law.

**15. Miscellaneous.** Time is of the essence hereof. This Repayment Note shall be governed by and construed under the laws of the State of California. Developer irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of Los Angeles or the United States District Court of the Central District of California, as Agency hereof may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Repayment Note. Borrower also waives any objection regarding personal or in rem jurisdiction or venue.

**"BORROWER"**

**PALLISER FURNITURE LTD.**

By: \_\_\_\_\_

Its: \_\_\_\_\_





## ATTACHMENT NO. 5

### PARTICIPATION NOTE

Burbank, California


**FOR VALUE RECEIVED, PALLISER FURNITURE LTD,** \_\_\_\_\_  
(the "Borrower"), promises to pay to the **REDEVELOPMENT AGENCY OF THE CITY OF BURBANK**, a public body, corporate and politic (the "Agency"), or order, at the Agency's office at 275 East Olive Avenue, Burbank, California 91502, or such other place as the Agency may designate in writing, the amount specified in the Repayment Note (the "Note Amount") plus interest as set forth herein, in currency of the United States of America, which at the time of payment is lawful for the payment of public and private debts.

#### 1. Definitions.

**"Agreement"** means the Commercial Rehabilitation Agreement, dated \_\_\_\_\_, 2005, by and between Borrower and the Agency.

**"Annual Participation Payment"** is defined in Section 4 of this Participation Note.

**"Gross Sales from Tenant Premises"** shall mean the sum of (i) the total (exclusive of all sales taxes or other taxes in the nature thereof) of all selling prices or charges (exclusive of interest or other carrying charges upon time or credit card sales) for merchandise sold at, in, on or from the Tenant Premises, whether for cash or on credit, by or for Borrower, reduced by any discounts or adjustments allowed to purchasers on such sales and by the price of returned merchandise so sold during an Anniversary Year (as defined below), and (ii) the gross sales of any concessionaire, licensee or subtenant of Borrower (approved by the Agency) occupying any portion or portions of the Tenant Premises (determined in accordance with the provisions of the preceding clause (i)); provided, however, in the case of coin-in-slot machines (including public telephones and vending machines) which Borrower may either maintain or license to be maintained on the Tenant Premises, such expression shall not mean the amounts collected in such machines, but only the license fees or other comparable fees which accrue to Borrower therefrom. The Gross Sales from Tenant Premises shall not include: (A) the exchange of merchandise between stores of Borrower where such exchanges are made solely for the convenient operation of Borrower's business and not for the purpose of consummating a sale which has theretofore been made at, in, on or from the Tenant Premises and/or for the purpose of depriving Agency of the benefit of a sale which otherwise would have been made at, in, on or from the Tenant Premises; or (B) returns to shippers or manufacturers; or (C) mail order (whether telephonic, electronic or otherwise) sales shipped from the Tenant Premises for merchandise orders placed through other retail or wholesale facilities, offices, or e-mail, facsimile transmission, internet or other similar telephonic or electronic addresses; or (D) sales of fixtures and equipment after use thereof in the conduct of Borrower's business in the Tenant Premises; or (E) all rent actually collected by Borrower from any concessionaire, licensee or subtenant of Borrower (if approved by the Agency) occupying any portion or portions of the



Tenant Premises; or (F) donations to charitable organizations; or (G) sales at a discount to employees of Borrower provided such sales do not exceed one (1%) percent of Gross Sales from Tenant Premises.

**"Lease"** means that certain lease to be executed by and between Borrower (or any of its subsidiary or related corporations, including EQ3) and Palm Avenue Associates for approximately 8,725 adjusted gross square feet of space in the building located at 308 San Fernando Blvd, in the City of Burbank, California.

**"Tenant Premises"** shall have the same meaning as ascribed to it under the Agreement.

**2. Agreement.** This Participation Note (the "Participation Note") is given in accordance with the Agreement. This Participation Note evidences the Borrower's obligation to make Annual Participation Payments of a percentage of Gross Sales from Tenant Premises as required by the Agreement and as set forth herein. The rights and obligations of the Borrower and the Agency under this Participation Note shall be governed by the Agreement and by the additional terms set forth in this Participation Note. In the event of any inconsistencies between the terms of this Participation Note and the terms of the Agreement as it pertains to Annual Participation Payments, and/or any other document related to the Annual Participation Payments, the terms of this Participation Note shall prevail.

**3. Interest.** The Note Amount shall bear interest at a rate of \_\_\_\_\_ percent (\_\_\_%), which represents the Prime Rate of interest (as published in the Wall Street Journal) as of the date the Agreement was executed plus two percentage points (2%) (the "Interest Rate"), amortized over the ten-year period of this Repayment Note.

**4. Annual Participation Payments.**

**a.** Subject to the provisions set forth herein, commencing on the first anniversary date of the commencement of the Open Business Obligation, as defined below, and on every yearly anniversary date thereafter (each, an "Anniversary Year Date") during the term of this Participation Note (each twelve month period being an "Anniversary Year"), Borrower shall pay the Agency an amount equal to Three Percent (3%) of Borrower's Gross Sales from Tenant Premises in excess of Three Million Dollars (\$3,000,000) (hereinafter defined as the "Annual Participation Payment"). By way of example and without limitation, if the Gross Revenues from Tenant Premises for an Anniversary Year equals \$4,000,000, then Borrower shall pay the Agency an Annual Participation Payment for that Anniversary Year in the amount of \$30,000, calculated as follows:  $3\% \times (4,000,000 \text{ less } \$3,000,000) = 30,000$ . For an Anniversary Year that begins before the expiration of term of this Participation Note and ends after the expiration of the term of this Participation Note, the Borrower shall pay Agency a prorated Annual Participation Payment based upon the number of days the Anniversary Year coincides with the term of this Participation Note. The "Open Business Obligation" shall mean (i) the obligation of the Borrower (or any of its subsidiary or related corporations, including EQ3) to lease the Tenant Premises from the Owner for ten years and (ii) Borrower's (or any of its subsidiary or related corporations, including EQ3) obligation to open for business and



operate an EQ3 store within the Tenant Premises. For the purposes of this Participation Note, the "commencement of the Open Business Obligation means the date EQ3 opens for business to the general public with the same or similar business hours as the EQ3 stores operating in California as of the Date the Agreement (as defined in the Agreement).

b. Borrower shall pay the Annual Participation Payment within fifteen (15) days of each Anniversary Year Date commencing on the first Anniversary Year Date, and continuing every Anniversary Year Date thereafter until the expiration of the term of this Participation Note. When submitting payment of the Annual Participation Payment, Borrower (through its chief financial officer) shall certify to the Agency (in a form acceptable to the City) that the annual Gross Sales from Tenant Premises and Annual Participation Payment are true and correct ("Borrower's Certification"). Within thirty (30) days of receiving the Borrower Certification, City shall have the right to accept the Borrower's certification or audit the gross receipts and sales books of Borrower pertaining to Gross Sales from Tenant Premises for the Anniversary Year.

c. Upon the end of the term of this Participation Note, all outstanding principal and interest remaining under this Participation Note, after payment of Annual Participation Payments hereunder, shall be fully and irrevocably forgiven.

d. Notwithstanding anything to the contrary in this Participation Note, the Agreement, or the Repayment Note (as defined in the Agreement), the combined amount of payments made under the Repayment Note that are actually made (and not forgiven) and under this Participant Note shall not exceed the original Note Amount, plus all interest that has accrued pursuant to Section 3 hereof. Amounts forgiven and excused under Section 3 of the Repayment Note shall not be credited against amounts owing under this Participation Note; provided, however, that such amounts forgiven and excused shall be credited against the amounts payable by Borrower in the event of Acceleration pursuant to Section 12 below.

e. All Annual Participation Payments pursuant to this Participation Note shall be credited against the outstanding amount of the Repayment Note. It is understood that notwithstanding anything in the Repayment Note or this Participation Note to the contrary, the total combined amount payable pursuant to the Repayment Note and the Participation Note equals the Agency Loan, the Repayment Note and the Participation Note both being security for the repayment of the Agency Loan. Once the Borrower has paid Annual Participation Payments equaling the amount of the Agency Loan plus interest, Annual Participation Payments shall cease to be payable.

5. **Term of Note.** Subject to the provisions hereof, the term of this Participation Note shall be ten years from the Note Date. There shall be no prepayment penalty on this Participation Note.

6. **Waivers.**

a. Borrower expressly agrees that this Participation Note or any payment hereunder may be extended from time to time at the Agency's sole discretion and that the Agency may accept security in consideration for any such extension or release any security for this Participation Note at its sole discretion all without in any way affecting the liability of Borrower.

b. No extension of time for payment of this Participation Note made by agreement by the Agency with any person now or hereafter liable for the payment of this Participation Note shall operate to release, discharge, modify, change or affect the original liability of Borrower under this Participation Note, either in whole or in part.

c. The obligations of Borrower under this Participation Note shall be absolute and Borrower waives any and all rights to offset, deduct or withhold any payments or charges due under this Participation Note for any reasons whatsoever.

d. Borrower waives presentment, demand, notice of protest and nonpayment, notice of default or delinquency, notice of acceleration, notice of costs, expenses or leases or interest thereon, notice of dishonor, diligence in collection or in proceeding against any of the rights of interests in or to properties securing of this Participation Note, and the benefit of any exemption under any homestead exemption laws, if applicable.

e. No previous waiver and no failure or delay by Agency in acting with respect to the terms of this Participation Note or the Deed of Trust shall constitute a waiver of any breach, default, or failure or condition under this Participation Note, the Deed of Trust or the obligations secured thereby. A waiver of any term of this Participation Note, the Deed of Trust or of any of the obligations secured thereby must be made in writing and shall be limited to the express written terms of such waiver.

7. **Attorneys' Fees and Costs.** Borrower agrees that if any amounts due under this Participation Note are not paid when due, to pay in addition, all costs and expenses of collection and reasonable attorneys' fees paid or incurred in connection with the collection or enforcement of this Participation Note, whether or not suit is filed.

8. **Joint and Several Obligation.** Except as otherwise provided in Section 19 herein, this Participation Note is the joint and several obligation of all makers, sureties, guarantors and endorsers, and shall be binding upon them and their heirs, successors and assigns.

9. **Amendments and Modifications.** This Participation Note may not be changed orally, but only by an amendment in writing signed by Borrower and by the Agency.

10. **Agency May Assign.** Agency may, at its option, assign its right to receive payment under this Participation Note without necessity of obtaining the consent of the Borrower.

11. **Borrower Assignment Prohibited.** This Participation Note is not assignable by Borrower unless the Agency determines in its reasonable discretion that such successor tenant/occupant is an equal or better quality retail tenant than EQ3. As set forth in Section 6.3 of the Agreement, Borrower shall not assign this Participation Note unless the Agency



determines, in its sole and absolute discretion, that the proposed assignee can provide adequate security to secure this Participation, it being agreed and understood that the Agency is permitting the Borrower to be a self-guarantor for this Participation Note based upon Borrower's financial condition.

**13. Terms.** Any terms not separately defined herein shall have the same meanings as set forth in the Agreement.

**14. Acceleration and Other Remedies.** Upon: (a) the occurrence of an event of Default as defined in the Agreement, (b) failure to make an Annual Participation Payment within thirty (30) days of the Agency notifying Borrower in writing of said Annual Payment being due, or (c) except as otherwise permitted in the Agreement or this Participation Note, Borrower assigning or attempting to assign its interests, rights and obligations under the Agreement or this Participation Note, Agency may, at Agency's option, declare the outstanding principal amount of this Participation Note, if any, subject to subsection (d) of Section 4 of this Participation Note, to be due and payable immediately, and upon such declaration, such principal and interest shall immediately become and be due and payable without demand or notice. All costs of collection, including, but not limited to, reasonable attorneys' fees and all expenses incurred by the Agency in connection with the payment of any and all amounts owing under this Participation Note may be added to the principal hereunder and shall accrue interest as provided herein. Any delay or omission on the part of the Agency in exercising any right hereunder or under the Agreement shall not operate as a waiver of such right, or of any other right. No single or partial exercise of any right or remedy hereunder or under the Agreement or any other document or agreement shall preclude other or further exercises thereof, or the exercise of any other right or remedy. The acceptance of payment of any sum payable hereunder, or part thereof, after the due date of such payment shall not be a waiver of Agency's right to either require prompt payment when due of all other sums payable hereunder or to declare an Event of Default for failure to make prompt or complete payment.

**15. Successors and Assigns.** Whenever "Agency" is referred to in this Participation Note, such reference shall be deemed to include the Redevelopment Agency of the City of Burbank and its successors and assigns, including, without limitation, any subsequent assignee or holder of this Participation Note. All covenants, provisions and agreements by or on behalf of Borrower, and on behalf of any makers, endorsers, guarantors and sureties hereof which are contained herein shall inure to the benefit of the Agency and Agency's successors and assigns.

**16. Usury.** It is the intention of Borrower and Agency to conform strictly to the Interest Law, as defined below, applicable to this loan transaction. Accordingly, it is agreed that notwithstanding any provision to the contrary in this Participation Note, or in any of the documents securing payment hereof or otherwise relating hereto, the aggregate of all interest and any other charges or consideration constituting interest under the applicable Interest Law that is taken, reserved, contracted for, charged or received under this Participation Note, or under any of the other aforesaid agreements or otherwise in connection with this loan transaction, shall under no circumstances exceed the maximum amount of interest allowed by

the Interest Law applicable to this loan transaction. If any excess of interest in such respect is provided for in this Participation Note, or in any of the documents securing payment hereof or otherwise relating hereto, then, in such event:

- a. the provisions of this paragraph shall govern and control;
- b. neither Borrower nor Borrower's heirs, legal representatives, successors or assigns shall be obligated to pay the amount of such interest to the extent that it is in excess of the maximum amount of interest allowed by the Interest Law applicable to this loan transaction;
- c. any excess shall be deemed canceled automatically and, if theretofore paid, shall be credited on this Participation Note by Agency or, if this Participation Note shall have been paid in full, refunded to Borrower; and
- d. the effective rate of interest shall be automatically subject to reduction to the Maximum Legal Rate of Interest (as defined below), allowed under such Interest Law, as now or hereafter construed by courts of appropriate jurisdiction. To the extent permitted by the Interest Law applicable to this loan transaction, all sums paid or agreed to be paid to Agency for the use, forbearance or detention of the indebtedness evidenced hereby shall be amortized, prorated, allocated and spread throughout the full term of this Participation Note. For purposes of this Participation Note, "Interest Law" shall mean any present or future law of the State of California, the United States of America, or any other jurisdiction which has application to the interest and other charges under this Participation Note. The "Maximum Legal Rate of Interest" shall mean the maximum rate of interest that Agency may from time to time charge Borrower, and under which Borrower would have no claim or defense of usury under the Interest Law.

**16. Miscellaneous.** Time is of the essence hereof. This Participation Note shall be governed by and construed under the laws of the State of California. Developer irrevocably and unconditionally submits to the jurisdiction of the Superior Court of the State of California for the County of Los Angeles or the United States District Court of the Central District of California, as Agency hereof may deem appropriate, in connection with any legal action or proceeding arising out of or relating to this Participation Note. Borrower also waives any objection regarding personal or in rem jurisdiction or venue.

**"BORROWER"**

**PALLISER FURNITURE LTD.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_



**ATTACHMENT NO. 6**

RECORDING REQUESTED BY )  
AND WHEN RECORDED MAIL TO: )  
)  
)  
)  
)  
)  
)

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This document is exempt from the payment of a recording fee pursuant to Government Code Section 27383.

**RELEASE OF CONSTRUCTION COVENANTS**

**THIS RELEASE OF CONSTRUCTION COVENANTS** (the "Release") is made as of \_\_\_\_\_, 200\_, by the **REDEVELOPMENT AGENCY OF THE CITY OF BURBANK**, a public body, corporate and politic (the "Agency"), in favor of **PALLISER FURNITURE LTD**, a \_\_\_\_\_ (the "Developer"), as of the date set forth below.

***RECITALS***

**A.** The Agency and the Developer have entered into that certain Commercial Rehabilitation Agreement (the "Agreement") dated \_\_\_\_\_, 2005 concerning the redevelopment of certain real property situated in the City of Burbank, California as more fully described in Exhibit "A" attached hereto and made a part hereof.

**B.** As referenced in Section 2.11 of the Agreement, the Agency is required to furnish the Developer or its successors with a Release of Construction Covenants upon completion of construction of the Improvements (as defined in the Agreement), which Release is required to be in such form as to permit it to be recorded in the Recorder's office of Los Angeles County. This Release is conclusive determination of satisfactory completion of the construction of the Improvements required by the Agreement.

**C.** The Agency has conclusively determined that such construction and development has been satisfactorily completed.

**NOW, THEREFORE,** the Agency hereby certifies as follows:

1. The Improvements to be constructed by the Developer have been fully and satisfactorily completed in conformance with the Agreement. Any operating requirements and all use, maintenance or nondiscrimination covenants contained in the Agreement and other documents executed and recorded pursuant to the Agreement shall remain in effect and enforceable according to their terms.

2. Nothing contained in this instrument shall modify in any other way any other provisions of the Agreement.

**IN WITNESS WHEREOF,** the Agency has executed this Release as of the date set forth above.

**REDEVELOPMENT AGENCY OF THE CITY  
OF BURBANK,** a public body, corporate and  
politic

By: \_\_\_\_\_  
Executive Director

**ATTEST:**

\_\_\_\_\_  
Agency Secretary

**APPROVED AS TO FORM:**  
Agency Legal Counsel

\_\_\_\_\_  
By: Sr. Assistant City Attorney

**APPROVED BY DEVELOPER:**  
PALLISER FURNITURE LTD.,

By: \_\_\_\_\_  
Its: \_\_\_\_\_



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE PROPERTY**

(see attached)

DESCRIPTION OF THE "PROPERTIES"

PARCEL 2:

THAT PORTION OF LOTS 13, 15, 17 AND 19 IN BLOCK 50 OF TOWN OF BURBANK, IN THE CITY OF BURBANK, AS PER MAP RECORDED IN BOOK 17 PAGE 19 OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

BEGINNING AT THE MOST SOUTHERLY CORNER OF SAID LOT 19; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID LOT 19, A DISTANCE OF 106 FEET TO THE TRUE POINT OF BEGINNING; THENCE NORTHEASTERLY AT RIGHT ANGLES TO THE SAID SOUTHWESTERLY LINE OF SAID LOT 19 AND PARALLEL WITH THE SOUTHEASTERLY LINES OF SAID LOTS 13, 15, 17 AND 19, A DISTANCE OF 170 FEET; THENCE SOUTHEASTERLY PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID LOT 13, A DISTANCE OF 56 FEET; THENCE AT RIGHT ANGLES AND PARALLEL WITH THE SOUTHEASTERLY LINES OF LOTS 13, 15, 17 AND 19 TO THE SOUTHWESTERLY LINE OF SAID LOT 19; THENCE NORTHWESTERLY ALONG SAID SOUTHWESTERLY LINE OF SAID LOT 19, A DISTANCE OF 56 FEET TO THE TRUE POINT OF BEGINNING.

EXCEPT THAT PORTION OF LOT 13 IN BLOCK 50 OF TOWN OF BURBANK, IN THE CITY OF BURBANK, AS PER MAP RECORDED IN BOOK 17 PAGES 19 TO 22 INCLUSIVE OF MISCELLANEOUS RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT THE MOST SOUTHERLY CORNER OF SAID BLOCK 50; THENCE NORTHWESTERLY ALONG THE SOUTHWESTERLY LINE OF SAID BLOCK, A DISTANCE OF 106.00 FEET TO A LINE THAT IS PARALLEL WITH THE SOUTHEASTERLY LINE OF SAID BLOCK 50; THENCE NORTHEASTERLY ALONG SAID PARALLEL LINE 160.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID PARALLEL LINE 10.00 FEET TO A LINE THAT IS PARALLEL WITH THE SOUTHWESTERLY LINE OF SAID BLOCK 50; THENCE SOUTHEASTERLY ALONG THE LAST SAID PARALLEL LINE 106.00 FEET TO THE SOUTHEASTERLY LINE 10.00 FEET; THENCE NORTHWESTERLY 106.00 FEET TO THE TRUE POINT OF BEGINNING.

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**FIRST ADMINISTRATIVE AMENDMENT TO THE SCHEDULE OF  
PERFORMANCE TO COMMERCIAL REHABILITATION AGREEMENT**

The Redevelopment Agency of the City of Burbank ("Agency") has entered into a Commercial Rehabilitation Agreement ("Agreement"), dated April 20, 2005, with Palliser Furniture, Ltd. ("Developer") for the improvement of a 8,725 square foot commercial building located at 308 N. South San Fernando Boulevard.

Because additional time is needed to complete certain building and tenant improvements, the SOP is being administratively amended to extend the date to complete the improvements from August 31, 2005 to October 31, 2005. The amended Schedule of Performance is attached hereto.

Administrative amendments to the DDA, including the SOP, may be approved by the Assistant Executive Director provided such amendments do not change the uses permitted on the Site, add to the costs to be incurred by the Agency, or cumulatively extend the schedule of performance by more than one year. This administrative amendment to the SOP will not change the uses permitted, add to the costs to be incurred by the Agency, or contribution to a cumulative extension of the schedule of performance of more than one year.

This Administrative Amendment is executed on this 16<sup>th</sup> day of June, 2005.

**AGENCY:**

**REDEVELOPMENT AGENCY OF THE CITY OF  
BURBANK**, a public body, corporate and politic

By: \_\_\_\_\_

*Susan M. Georgino*  
Susan M. Georgino  
Assistant Executive Director

**APPROVED AS TO FORM:**

Dennis A. Barlow, City Attorney/  
Agency General Counsel

*May J. Garcia*

\_\_\_\_\_  
Michael J. Garcia  
Senior Assistant City Attorney

**DEVELOPER:**

**PALLISER FURNITURE LTD.**  
a Canadian federal limited liability corporation

By: \_\_\_\_\_

*J. Reginald Kliewer*  
J. Reginald Kliewer, Sr. V.P. Finance

## SCHEDULE OF PERFORMANCE

**Submission of Commercial Rehabilitation**

Completed.

**Agreement.** Developer shall submit to the Agency a copy of the Commercial Rehabilitation Agreement duly executed by the Developer.

**Agency Approval of Commercial**

Completed.

**Rehabilitation Agreement.** Agency shall approve or disapprove the Commercial Rehabilitation Agreement.

**Submission of Construction Drawings.**

Within 30 days after execution of the Agreement.

Developer shall submit a complete set of Construction Drawings for the Base Building Improvements to the Building/Engineering and Redevelopment Divisions.

**Building/Engineering and Redevelopment**

Within 15 days after a complete submittal.

**Review of Construction Drawings.** The Building/Engineering and Redevelopment Divisions shall approve or disapprove the Construction Drawings for the Base Building Improvements.

**Revisions to Construction Drawings by the**

Within 5 business days after receipt.

**Developer.** Developer shall prepare revised Construction Drawings for the Base Building Improvements as necessary, and resubmit them to the Building/Engineering and Redevelopment Divisions for review.

**Final Review of Construction Drawings.**

Within 10 days after submittal.

The Building/Engineering and Redevelopment Divisions shall approve or disapprove the revisions submitted by the Developer for the Base Building Improvements and the Developer shall be ready to obtain building permits, provided that the revisions necessary to accommodate the Department's comments.

**Execution of Lease Agreement.** Developer shall execute a lease agreement with EQ3 for a minimum of ten years and for approximately 8,725 square foot of space.

No later than July 15, 2005.



**Conditions Precedent to Agency Loan.**

Developer and Agency shall satisfy (or waive) all of their respective Conditions Precedent to Closing for the Agency Loan.

No later than July 30, 2005.

**Completion of Base Improvements.** Developer shall complete Base Building Improvements to the building.

No later than October 31, 2005.

**Submission of Exterior Concept Drawings.**

Developer shall cause EQ3 to submit a set of complete Exterior Concept Drawings to the Redevelopment Division for the Exterior Improvements to the Building.

Within 15 days after execution of the Lease.

**Review of Exterior Concept Drawings.**

Redevelopment Division shall approve or disapprove Exterior Concept Drawings.

Within 5 business days after complete submittal.

**Revisions to Exterior Concept Drawings.**

Developer shall cause EQ3 to prepare revised Exterior Concept Drawings to the Redevelopment Division.

Within 5 business days after receipt of Redevelopment comments.

**Final Review of Exterior Concept Drawings.**

The Redevelopment Division shall approve or disapprove revisions to the Exterior Concept Drawings submitted by EQ3.

Within 10 business days after re-submittal.

**Completion of Tenant Improvements.**

Developer shall cause EQ3 to Complete the Tenant Improvements to the Building.

On or before October 31, 2005.

**Opening for Business for EQ3.**

On or before October 31, 2005.

